

United States District Court
Eastern District of California

Rueben Roberts,

Petitioner,

vs.

Brad Espinoza, Warden,

Respondent.

No. Civ. S 04-2232 MCE PAN P

Order

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October 20, 2004, petitioner, a state prisoner proceeding without counsel, filed an application for a writ of habeas corpus. See 28 U.S.C. § 2254. December 10, 2004, I granted petitioner's request to proceed in forma pauperis and ordered respondent¹ to respond to the petition. April 5, 2005, petitioner filed an application for a writ of habeas corpus challenging the same judgment but since he did not write the case number on it the Clerk of the Court opened a new case. See

¹ Brad Espinoza is substituted as respondent. See Rule 2(a), Rules Governing § 2254 Proceedings; Fed. R. Civ. P. 25(d).

1 Roberts v. Carey, Civ. S 05-0662 GEB PAN P. April 7, 2005,
2 respondent filed a motion to dismiss in this case. August 31,
3 2005, I directed the Clerk of the Court to place the petition in
4 the file for this case.

5 I construe the April 5, 2005, application as an amended
6 petition and since respondent has not answered, petitioner filed
7 it as a matter of course. Fed. R. Civ. P. 15(a).

8 I therefore deny respondent's April 7, 2005, motion to
9 dismiss without prejudice and direct respondent to respond to
10 petitioner's first-amended application within 60 days. See Rule
11 4, Fed. R. Governing § 2254 Cases. An answer shall be
12 accompanied by any and all transcripts or other documents
13 relevant to the determination of the issues presented in the
14 application. See Rule 5, Fed. R. Governing § 2254 Cases.
15 Petitioner's reply, if any, shall be filed and served within 30
16 days of service of an answer. If the response to petitioner's
17 application is a motion, petitioner's opposition or statement of
18 non-opposition shall be filed and served within 30 days of
19 service of the motion, and respondent's reply, if any, shall be
20 filed within 15 days thereafter. The Clerk of the Court shall
21 serve a copy of this order together with a copy of petitioner's
22 April 5, 2005, first-amended petition for a writ of habeas corpus

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pursuant to 28 U.S.C. § 2254 on Jo Graves, Senior Assistant
Attorney General for the State of California.

Dated: November 29, 2005.

/s/ Peter A. Nowinski

PETER A. NOWINSKI
Magistrate Judge